IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8581 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BALAJI DEVELOPERS & ANR.....Petitioner

Versus

GALEMANDI CHAR SAMPRADAYA MANDIR & ORS...Respondent

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Appearance:

MR AJ SHASTRI for Petitioners

MR SUDHANSHU PATEL AGP for Respondent Nos. 9 & 20

MR YS LAKHANI for Respondent Nos.10 to 19

Ms. CHHAYA for Respondent Nos.1 to 8

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 17/10/2000

ORAL JUDGEMENT

The petitioner by this petition under Article 226 of the Constitution of India, prays for issuance of a Writ of Mandamus or any other appropriate Writ quashing and setting aside the judgement and order dtd. 21st

February, 1997, passed by the Charity Commissioner as well as the order dtd. 24th October, 1997, passed by the Gujarat Revenue Tribunal in appeal.

2. The brief facts giving rise to the present petition may be stated. The respondent NO.1 - Shri Galemandi Char Sampradaya Mandir, Surat, is registered under the Bombay Public Trust Act. The respondent Nos. 1 to 8 are the trustees of the Trust. The trust was not in a position to fetch good income from the properties, it was having. Some of the properties were let to the tenants. The trust decided to sell the land situated in Ward No.6 bearing City Survey NO.130 to 165 Paiki, City Survey No.130 to 132 and City Survey No.149 to 165 ad-measuring 1503.84 sq.mts. On that land there were huts, wherein tenants were residing. The trust decided to lease out the said land to the petitioner for 98 years at the monthly rent of Rs.91,000/- and further on condition that the petitioner would pay deposit of Rs.91 lacs, which would be deposited in Fixed Deposit with any Bank. The interest was to be paid by way of rent. To have necessary permission under Sec. 36 of the Bombay Public Trust Act, the Charity Commissioner was moved presenting the application on 7th January, 1995. Thereafter, a public notice was published in the local daily on 25th March, 1996 and objections were invited by the respondent NO.3. The Joint Charity Commissioner at Baroda on 12th July, 1995, passed the order granting permission sought for; but on such term that instead of Rs.91,00,000/-, the petitioner shall deposit Rs.93,51,000/-, and instead of rent of Rs.91,000/-, he would be paying rent of Rs.1,16,000/- to the Trust. After such order, the petitioner started to construct getting possession from the tenants. The petitioner deposited the amount with Surat Urban Development Authority (SUDA) and also spent heavily for getting the land vacated which was in possession of the tenants. He had, for the said purpose spent Rs.4,05,000/-. The petitioner, therefore, could not make the payment to the Trust as per the agrement. The respondent NO.1, therefore, filed an application in the office of the Charity Commissioner for extension of time on 4th June, 1996. The Joint Charity Commissioner extended the time upto 31st July, 1996. During this period also the petitioner could not make the payment, with the result the trust again filed the application seeking extension. The Jt. Charity Commissioner on 17th October, 1996, extended the time upto 31st December, 1996. The permission initially granted was then to remain in force upto 31st December, 1996. Thereafter on 27th November, 1996, the trustees of the trust entered into the

agreement with respondent Nos. 10 to 19 with regard to the land in question. A notice was then given to the petitioner by the trust calling upon him to make the payment of Rs.43,51,000/- within a period of 7 days failing which it was made clear that the trust would assume that the petitioner was not ready and willing to perform his part of contract. A reply to such notice was given on 11th January, 1997, denying all the allegations and clarifying his position. It was also brought to the notice of the trust that the petitioner had already performed his part of contract spending heavily for the land, and also made it clear that he was ready and willing to perform his part of contract. The trust, however, approached the Jt. Charity Commissioner for getting necessary permission so as to entered into the agreement with respondent Nos. 10 to 19. The Charity Commissioner then, modified his earlier order dtd. 12th July, 1995. The petitioner having come to know about the modification made in the order by the Charity Commissioner, perused the same and could see that the Charity Commissioner had no authority to modify. The procedure he was required to follow was not followed. He was not given the notice and even fresh proposals were not invited. The objections were also not invited giving a public notice in the local daily having wide circulation. Around 17th June, 1997, the petitioner preferred an appeal before the Gujarat Revenue Tribunal challenging the order of the Charity Commissioner granting permission in favour of the respondent Nos. 10 to 19. Initially interim relief was granted on 14th August, 1997 by the tribunal ordering the parties to maintain status-quo and thereafter the interim relief was extended from time to time passing orders on 27th August, 1997, 22nd September, 1997 and lastly on 16th October, 1997. Though the interim relief was in force, the trust executed a lease-deed on 21st August, 1997 and committed breach thereof. On 24th October, 1997, the Gujarat Revenue Tribunal dismissed the appeal at the admission stage. It is against that order, this petition is filed calling in question the legality and validity thereof.

3. The learned advocate representing the petitioner contends that the Charity Commissioner, while passing the order on 3rd February, 1997 granting permission in favour of the respondent Nos.10 to 19, did not follow the procedure he was required to, and even did not afford reasonable opportunity to submit. Had the opportunity been given, the petitioner could have shown what difficulty he was experiencing and what were the circumstances under which he could not make the payment as per the contract. He had to obtain several

permissions from many authorities inclusive of the Municipal Corporation and though he was trying his best, necessary permissions were not given by the Municipal Corporation and other authorities.

4. In reply to such contention, Mr. Lakhani and Mr. Chhaya, the learned advocates representing the respondents submit that the Trust being the owner of the property has a right to entered into agreement and seek appropriate permission from the Charity Commissioner. The purchaser or any other person does not have a right to seek any opportunity to submit in the matter. If such opportunity is to be sought, it can be by the trust alone. Even Sec.36 of the Bombay Public Trust Act does not contemplate grant of such opportunity to the third party. If at all the petitioner was under the belief that he had committed no breach of the contract, but the trust had committed breach of contract by entering into another contract with respondent Nos. 10 to 19, the way open to him was to file a suit in the Civil Court for damages or for specific performance of the contract, but a Writ petition was not the remedy. After agreement was entered into, the petitioner did not make the payment, he was under obligation to and the trust twice sought extension from the Charity Commissioner for keeping the permission alive. However, the petitioner avoided to make the payment during the period extended by the Charity Commissioner. When the petitioner has thus committed the breach of the contract, it was open to the trust to enter into another contract with the respondent Nos. 10 to 19. The petitioner cannot claim any relief on the ground of principles of natural justice.

5. Whether the Charity Commissioner while granting the permission to the Trust for entering into another contract with respondent NO. 10 to 19 was bound to hear the petitioner and also follow the necessary procedure, are the points that arise for consideration. At this stage a decision of the Supreme Court rendered in the case of Ram and Shyam Company vs. State of Haryana and others, AIR 1985 SC 1147 may be referred to. It is made clear therein that whenever the property of the State or Public or Socialist Property (which in my view would cover Trust Property also) are to be disposed of, or dealt with, every citizen or persons have vital interest therein for effective use and legitimate disposal. The authorities dealing with the such properties and not the personal properties of some one, cannot deal with the same as he likes. The same has to be dealt with for the public purpose and in the public interest, and if it is a trust property it can be in the trust interest. There

should be nothing hanky-panky, and the transaction must be done at the best price so that the larger revenue coming into the coffers of the State (here to be read as trust) administration would serve the public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. Favouritism and nepotism must be frowned upon and the actions or the acts leading to loss of revenue must be checked. Even if the authorities have while dealing with the property passed the order which can be termed administrative function, the said administrative action must be fair and free from taint of unreasonableness, and must be in conformity with the norms and procedure set forth under the rules of public administration and whenever there is a public property with a view to have the best price, the same must take place publicly and not in secret. In that case for granting the lease auction was carried out and "A" being the highest bidder, his bid was accepted. But thereafter the Government refused to confirm the highest bid and lease was granted to "B", who had offered more money under the order of the Chief Minister. When the order granting the lease to "B" was challenged, the Supreme Court has castigating the action held as aforesaid. The opportunity to have his say in the matter was not given to and keeping him in dark, the lease was granted to "B". The decision can mutatis-mutadis apply to trust administration also.

6. In the case on hand, the petitioner has come forward with the say that when the Charity Commissioner granted permission again to the trust to enter into the agreement with respondent Nos. 10 to 19, he ought to have been heard, and opportunity to explain his inability to pay as per the contract ought to have been given to him. Reading the order in question Annexure-C it appears that the Charity Commissioner before passing the impugned order did not give a notice to the petitioner calling upon him to explain as to why he could not make the payment as per the agreement. Before granting permission for a fresh contract, a public notice was also not given so as to have the best market price making the field competitive. The Charity Commissioner has set at naught the principles of natural justice by omitting to afford the opportunity to the petitioner, and abstaining from publishing the notice in local daily. Hence, in view of the decision of the Supreme Court in the case of Ram & Shyam Co. (Supra), the order granting permission passed in favour of the respondents Nos. 10 to 19 is contrary to fair play in action, and therefore, the same is labile to be quashed and set aside. Consequently the order of the Gujarat Revenue Tribunal confirming the order of the

Charity Commissioner is also liable to be quashed and set aside.

7. For the aforesaid reasons, this application deserves to be allowed and it is allowed accordingly. The order of the Charity Commissioner dtd. 21st February, 1999 and the judgement and order dtd. 24th October, 1997 passed by the Revenue Tribunal confirming the order of Charity Commissioner are hereby quashed and set aside. The matter is referred back to the Charity Commissioner for a fresh consideration. He shall give reasonable opportunity to the petitioners and other concerned persons and if required inviting fresh proposal giving a public advertisement he shall pass necessary order in accordance with law. Rule accordingly made absolute. The parties shall maintain status-quo of the position as on today. The Charity Commissioner shall pass order hearing the petitioner and other concerned parties within three months from the receipt of the Writ.

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